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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER PORTER, RACHEL L	
			ART UNIT 3626	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

09/642,227

Applicant(s)

SHIMIZU, YUJI

Examiner

RACHEL L. PORTER

Art Unit

3626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/31/07.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) 58-111 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Notice to Applicant

1. This communication is in response to the amendment filed 10/31/07 . Claims 1-111 are pending. Claims 58-111 have been withdrawn from consideration as being drawn to non-elected invention.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-57 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Independent claims 1,29,30, and 55-57 recite limitations that are new matter. In particular, exemplary independent claim 1 has been amended to recite "configured to allow the customers to input opinion information not on use of any actual product by the customers." It should be noted that MPEP 2173.05 (i) explains that any negative limitation or exclusionary proviso must have basis in the original disclosure.

Claims 29,30,55-57 have all been similarly amended

The Examiner notes that the applicant has cited certain passages on page 40 of the response filed 10/31/07 which applicant argues support the amended claim

language. However, the Examiner respectfully disagrees, and does not find that the cited passages to provide sufficient support for the exclusionary language now included in the claim. In fact, while applicant has suggested that the information gathered regarding the product is before a product has been produced, the cited figure (FIG. 4) and passages (page 56, lines 15-23, and pg. 41, line 21- pg. 42, line 4) discuss trial product development.

Again, the Applicant is respectfully requested to clarify the above issues and to specifically point out support for the newly added limitations in the originally filed specification and claims, or to cancel the new matter.

Dependent claims 2-28, and 31-54 inherit the deficiencies of their respective independent claims, and are therefore also rejected.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-28, 29, and 30-57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 29, 30, and 55-57 recite the phrase "and/or" (e.g. "relating to the planning and/or development of new merchandise...")

The use of the "and/or" phrase renders the claim vague and indefinite because it is unclear which features are required as a part of the claimed invention. In other words, it is not clear whether one or both of the listed features are required for the claimed

invention. For the purpose of applying art, the Examiner will interpret "and/or" as "or" and apply art according.

Dependent claims 2-28, and 31-54 inherit the deficiencies of their respective independent claims, and are therefore also rejected.

Furthermore, claims 1,29,30, and 55-57 have been amended to recite the limitation " configured to allow the customers to input opinion information not on use of any actual product by the customers." The Examiner understands that is that there is nothing inherently ambiguous or uncertain about a negative limitation. However, according to MPEP 2173.05 (b), the boundaries of the patent protection sought must be set forth definitely, and, the claim must comply with the requirements of 35 U.S.C. 112, second paragraph. Furthermore, any negative limitation or exclusionary proviso must have basis in the original disclosure.

The current claim language fails to provide a clear and positive recitation of the type of opinion information which is included. In fact, while applicant has suggested that the information gathered regarding the product is an actual product has been produced, the cited figure (FIG. 4) and passages (page 56, lines 15-23, and pg. 41, line 21- pg. 42, line 4) discuss trial product needs analysis. The examiner understands a trial product to be an actual product (even if produced on a small scale.)

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 56-57 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The present claim recites "A computer readable medium *for* storing computer readable code execute..." in the preamble. Data structures not embodied on a computer readable media are considered descriptive material. They are therefore considered non-statutory because they are not capable of causing a functional change in a computer. As drafted, the claim fails to define any structural and functional interrelationships between the code and other elements of a computer that permit the computer program's function to be realized. (See MPEP § 2106.01) In other words, it is not clear from the the current language that the instructions are embodied on a computer readable medium.

In light of the above, it is respectfully submitted that the claimed invention, does not have a tangible result, and thus fails to recite the practical application of an abstract idea to satisfy the requirements of 35 U.S.C. 101.

Furthermore, clarification of support for the type of computer readable medium in the originally filed disclosure is requested. (See MPEP 2106.01 for further guidance).

As per claims 1 and 29, the preambles of the respective claims recite "a merchandise planning and development system." However, it is unclear which statutory class the claimed invention belongs to. In particular, it is unclear whether the recited components: a merchandise planning notice unit, a display unit, an opinion collecting unit, and a merchandise information notice unit are software/program components or

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hardware components. The examiner was unable to find reference to terms "a merchandise planning notice unit, a display unit, an opinion collecting unit, and a merchandise information notice unit" in the specification for further clarification.

As previously explained, data structures (e.g. software/program per se) not embodied on a computer readable media are considered descriptive material. They are therefore considered non-statutory because they are not capable of causing a functional change in a computer. As drafted, the claim fails to define any structural and functional interrelationships between the code and other elements of a computer that permit the computer program's function to be realized. (See MPEP § 2106.01)

A similar analysis applies to claims 2-28, and which are therefore also rejected. Further explanation/clarification is requested.

NOTE: The following prior art rejections are provided on the assumption that the added limitations are not new matter. However, the Applicant must provide a proper traversal of the new matter issues raised in the present Office Action in the Applicant's next response to the present Office Action.

NOTE: The following art rejections assume that the subject matter of claims 1-29 and 56-57 will be amended to recite statutory subject matter. The art rejections are provided hereinbelow for the Applicant's consideration on the condition that the Applicant properly incorporates statutory subject as discussed above in the rejections under 35 U.S.C. 101 in the next communication sent in response to the present Office Action.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-7, 29-33 and 55-57 rejected under 35 U.S.C. 103(a) as being unpatentable over Abelow (USPN 5,999,908) in view of Sammon, Jr. (USPN 6,012,051).

[claim 1] Abelow teaches a merchandise planning and development system comprising:

a merchandise planning information notice unit configured to inform many and unspecified customers of merchandise planning and development information relating to planning or development of new merchandise; (col. 9, lines 19-60; col. 16, lines 9-60; col. 17, line 33-col. 18, line 34)

a display unit, provided at the side of the customer and configured to display the merchandise planning and development information received from the merchandise notice unit, the display unit further configured to display an inquiry input screen and configured to allow the customers to input opinion information not on use of any actual product by the customers but on planning and development information (Figures 24-25, 30A, 33A; col. 32, lines 51-67; col. 69, lines 21-31) wherein the opinion information is inputted based on displayed merchandise planning and development information in the development period of the new merchandise. (col. 48, lines 32-42;

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col. 77, lines 10-15— The system accepts customer feedback regarding information and improvements on products before product new merchandise is used)

an opinion information collecting unit configured to collect the opinion information of customers inputted from the display unit information; and (col. 16, lines 4-60; col. 17, line 33-col. 18, line 34)

a merchandise information notice unit for informing the customers of information on merchandise designed according to an analysis of the opinion information. (see abstract; col. 12, lines 20-col. 13, line 2; col. 16, lines 4-60; col. 18, lines 63-col. 20, lines 30; col. 69, lines 17-60)

Abelow discloses a system wherein information is input when an inquiry screen prompts/requests the data from a user based upon the requirements of the merchandise planning and development process (Abelow: Figures 24-25, col. 32, lines 51-67) Furthermore, the system accepts customer feedback regarding information and improvements on products before product new merchandise is used. (col. 48, lines 32-42; col. 77, lines 10-15)

Claim 1 further recites that the data is transmitted/received via the Internet. Abelow does not expressly disclose how data is transmitted (e.g. via the internet), but does disclose that the Internet is a relevant digital environment for the disclosed invention. (col. 85, lines 20-32)

Sammon, Jr. discloses a system for gathering and processing consumer opinions on products, wherein data is transmitted and received over the Internet. (Sammon: col. 5, lines 2-10) At the time of the Applicant's invention, it would have

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been obvious to one of ordinary skill in the art to modify the system of Abelow with the teaching of Sammon to transmit and receive data over the Internet. As suggested by Abelow, one would have been motivated to include this feature so that users could link to relevant data and resources regardless of the location of the data worldwide.

(Abelow: col. 86, lines 35-47)

[claims 2-4] Abelow teaches a system for surveying the popularity of various products (i.e. plurality of products) at various stages of the product life cycle, including product launch (i.e. trial products) (col. 9, lines 19-60; col. 16, lines 4-60; col. 17, line 33-col. 18, line 34; col. 18, lines 63-col. 19, lines 49, Figures 16, 22-24). Abelow further discloses that the system provides information on a plurality of new/prototype (i.e. trial) products (abstract, col. 19, line 42-col. 20, line 31—provides support and information on new development on product throughout product life cycle)

[claims 5-6] see Abelow: col. 10, lines 3-14; col. 75, lines 41-61.

[claim 7] Abelow teaches the merchandise planning and development system according to claim 1, wherein said opinion information collecting unit collects the opinion information from said many and unspecified customers, on the basis of the results of electronic inquiry in order to analyze the needs. (col. 27, line 65-col. 28, line 67; col. 35, line 64-col. 37, line 19)

[claims 29] The limitations of claim 29 are substantially similar to those recited in claim 1. Claim 29 varies from claim 1 in that it recites that information relating to the

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development of a plurality of new merchandise. Abelow discloses a merchandise planning information notice unit configured to inform many and unspecified customers about information relating to the planning or development of a plurality of new merchandise. (col. 9, lines 19-60; col. 16, lines 9-60; col. 17, line 33-col. 18, line 34)

[claim 30] Abelow teaches a merchandise planning and development method comprising:

a merchandise planning information notice step of informing many and unspecified customers of merchandise planning and development information relating to planning or development of new merchandise in a development period; (col. 9, lines 19-60; col. 16, lines 4-60; col. 17, line 33-col. 18, line 34)

a display step of displaying, at the side of the customer, the merchandise planning and development information received from the merchandise notice unit, the display step further displaying an inquiry input screen for allowing the customers to input opinion information not on use of any actual product by the customers but on the merchandise planning and development information (Figures 24-25, 30A, 33A, col. 32, lines 51-67; col. 69, lines 21-31) wherein the opinion information is inputted based on displayed merchandise planning and development information prior to use of the new merchandise. (col. 48, lines 32-42; col. 77, lines 10-15—system accepts customer feedback regarding information and improvements on products before product new merchandise is used)

receiving the opinion information input by the customers (col. 32, lines 51-67)

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an opinion information collecting step for collecting the received opinion information input by customers; and (col. 16, lines 4-60; col. 17, line 33-col. 18, line 34)

a merchandise information notice step informing the customers of information on merchandise designed according to an analysis of the opinion information. (see abstract; col. 12, lines 20-col. 13, line 2; col. 16, lines 9-60; col. 18, lines 63-col. 20, lines 30; col. 69, lines 17-60)

Abelow discloses a system wherein information is input when an inquiry screen prompts/requests the data from a user based upon the requirements of the merchandise planning and development process (Abelow: Figures 24-25, col. 32, lines 51-67) Furthermore, the system accepts customer feedback regarding information and improvements on products before product new merchandise is used. (col. 48, lines 32-42; col. 77, lines 10-15)

Claim 30 further recites that the data is transmitted/received via the Internet. Abelow does not expressly disclose how data is transmitted (e.g. via the internet), but does disclose that the Internet is a relevant digital environment for the disclosed invention. (col. 85, lines 20-32)

Sammon, Jr. discloses a system for gathering and processing consumer opinions on products, wherein data is transmitted and received over the Internet. (Sammon: col. 5, lines 2-10) At the time of the Applicant's invention, it would have been obvious to one of ordinary skill in the art to modify the method of Abelow with the teaching of Sammon to transmit and receive data over the Internet. As suggested by Abelow, one would

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have been motivated to include this feature so that users could link to relevant data and resources regardless of the location of the data worldwide. (Abelow: col. 86, lines 35-47)

[claims 31-33] Abelow teaches a method of surveying the popularity of various products at various stages of the product life cycle, including product launch (i.e. trial product) (col. 9, lines 19-60; col. 16, lines 4-60; col. 17, line 33-col. 18, line 34; col. 18, lines 63-col. 19, lines 49, Figures 16, 22-24). Abelow further discloses that the system provides information on a plurality of new/prototype (i.e. trial) products. (abstract, col. 19, line 42-col. 20, line 31- provides support and information on new development on product throughout product life cycle)

[claim 55] Abelow teaches merchandise planning and development method comprising:

a merchandise planning information notice step of informing many and unspecified customers of merchandise planning and development information relating to planning or development of a plurality of new merchandise on the basis of one concept in a development period; (col. 9, lines 19-60; col. 16, lines 4-60; col. 17, line 33-col. 18, line 34)

a displaying step of displaying, at a side of the customer, the merchandise planning and development information received, the display step further displaying an inquiry input screen for allowing the customers to input opinion information not on use of any actual product by the customers but on the merchandise planning and

development information on the merchandise planning and development information (Figures 24-25, 30A, 33A, col. 69, lines 21-31) wherein the opinion information is inputted based on displayed merchandise planning and development information in the development period of the plurality of new merchandise. (col. 48, lines 32-42; col. 77, lines 10-15—system accepts customer feedback regarding information and improvements on products before product new merchandise is used)

receiving the opinion information input by the customers (col. 32, lines 51-67)
an opinion information collecting step of collecting the received opinion information input by customers; and (col. 16, lines 4-60; col. 17, line 33-col. 18, line 34)

a merchandise information notice step of informing the customers of information on said plurality of new merchandise designed according to an analysis of the opinion information. (see abstract; col. 12, lines 20-col. 13, line 2; col. 16, lines 4-60; col. 18, lines 63-col. 19, lines 49; col. 69, lines 17-60)

Abelow discloses a system wherein information is input when an inquiry screen prompts/requests the data from a user based upon the requirements of the merchandise planning and development process (Abelow: Figures 24-25, col. 32, lines 51-67) Furthermore, the system accepts customer feedback regarding information and improvements on products before product new merchandise is used. (col. 48, lines 32-42; col. 77, lines 10-15)

Claim 55 further recites that the data is transmitted/received via the Internet. Abelow does not expressly disclose how data is transmitted (e.g. via the internet), but

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does disclose that the Internet is a relevant digital environment for the disclosed invention. (col. 85, lines 20-32)

Sammon, Jr. discloses a system for gathering and processing consumer opinions on products, wherein data is transmitted and received over the Internet. (Sammon: col. 5, lines 2-10) At the time of the Applicant's invention, it would have been obvious to one of ordinary skill in the art to modify the method of Abelow with the teaching of Sammon to transmit and receive data over the Internet. As suggested by Abelow, one would have been motivated to include this feature so that users could link to relevant data and resources regardless of the location of the data worldwide. (Abelow: col. 86, lines 35-47)

[claims 56] Abelow teaches a computer readable medium for storing instructions, which when executed by a computer, causes the computer to perform:

a merchandise planning information notice step of informing many and unspecified customers of merchandise planning and development information relating to planning or development of new merchandise in a development period; (col. 9, lines 19-60; col. 16, lines 4-60; col. 17, line 33-col. 18, line 34)

a displaying step of displaying, at a side of the customer, the merchandise planning and development information received, the displaying step further displaying an inquiry input screen for allowing the customers to input opinion information not on use of any actual product by the customers but on the merchandise planning and development information (Figures 24-25, 30A, 33A, col. 69, lines 21-31) wherein the

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opinion information is inputted based on displayed merchandise planning and development information in the development period of the new merchandise. (col. 48, lines 32-42; col. 77, lines 10-15—system accepts customer feedback regarding information and improvements on products before product new merchandise is used)

receiving the opinion information input by the customers (col. 32, lines 51-67)

an opinion information collecting step of collecting the received opinion information input by customers; and (col. 16, lines 4-60; col. 17, line 33-col. 18, line 34)

a merchandise information notice step of informing customers of information on merchandise designed according to an analysis of the opinion information (see abstract; col. 12, lines 20-col. 13, line 2; col. 16, lines 4-60; col. 18, lines 63-col. 19, lines 49)

Abelow discloses a system wherein information is input when an inquiry screen prompts/requests the data from a user based upon the requirements of the merchandise planning and development process (Abelow: Figures 24-25, col. 32, lines 51-67) Furthermore, the system accepts customer feedback regarding information and improvements on products before product new merchandise is used. (col. 48, lines 32-42; col. 77, lines 10-15)

Claim 56 further recites that the data is transmitted/received via the Internet. Abelow does not expressly disclose how data is transmitted (e.g. via the internet), but does disclose that the Internet is a relevant digital environment for the disclosed invention. (col. 85, lines 20-32)

Sammon, Jr. discloses a system for gathering and processing consumer opinions on products, wherein data is transmitted and received over the Internet. (Sammon: col. 5, lines 2-10) At the time of the Applicant's invention, it would have been obvious to one of ordinary skill in the art to modify the method of Abelow with the teaching of Sammon to transmit and receive data over the Internet. As suggested by Abelow, one would have been motivated to include this feature so that users could link to relevant data and resources regardless of the location of the data worldwide. (Abelow: col. 86, lines 35-47)

[claim 57] Abelow teaches a computer readable medium for storing instructions, which when executed by a computer, causes the computer to perform:

a merchandise planning information notice step of informing many and unspecified customers of merchandise planning and development information relating to planning or development of a plurality of new merchandise on the basis of one concept in a development period; (col. 9, lines 19-60; col. 16, lines 4-60; col. 17, line 33-col. 18, line 34)

a displaying step of displaying, at the side of the customer, the merchandise planning and development information received, the display step further displaying an inquiry input screen for allowing the customers to input opinion information not on use of any actual product by the customers but on the merchandise planning and development information (Figures 24-25, 30A, 33A, col. 32, lines 51-67; col. 69, lines 21-31) wherein the opinion information is inputted based on displayed merchandise

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planning and development information in a development period the new merchandise. (col. 48, lines 32-42; col. 77, lines 10-15—system accepts customer feedback regarding information and improvements on products before product new merchandise is used)

receiving the opinion information input by the customers (col. 32, lines 51-67)

an opinion information collecting step of the received collecting opinion information input by the customers inputted at the displaying step; and (col. 16, lines 4-60; col. 17, line 33-col. 18, line 34)

a merchandise information notice step of informing the customers of information on said plurality of new merchandise designed according to an analysis of the opinion information. (col. 16, lines 4-60; col. 18, lines 63-col. 19, lines 49)

Abelow discloses a system wherein information is input when an inquiry screen prompts/requests the data from a user based upon the requirements of the merchandise planning and development process (Abelow: Figures 24-25, col. 32, lines 51-67) Furthermore, the system accepts customer feedback regarding information and improvements on products before product new merchandise is used. (col. 48, lines 32-42; col. 77, lines 10-15)

Claim 57 further recites that the data is transmitted/received via the Internet. Abelow does not expressly disclose how data is transmitted (e.g. via the internet), but does disclose that the Internet is a relevant digital environment for the disclosed invention. (col. 85, lines 20-32)

Sammon, Jr. discloses a system for gathering and processing consumer opinions on products, wherein data is transmitted and received over the Internet. (Sammon: col.

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5, lines 2-10) At the time of the Applicant's invention, it would have been obvious to one of ordinary skill in the art to modify the method of Abelow with the teaching of Sammon to transmit and receive data over the Internet. As suggested by Abelow, one would have been motivated to include this feature so that users could link to relevant data and resources regardless of the location of the data worldwide. (Abelow: col. 86, lines 35-47)

9. Claims 8,9,11,13,17-24,34,35,37,39, and 43-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abelow and Sammon as applied to claims 1 and 30, and in further view of Murcko, Jr. (USPN 6,578,014).

[claims 8,9,11, and 13] Abelow and Sammon in combination teach a merchandise planning and development system that operates via the internet as explained in the rejection of claim 1, but Abelow does not expressly disclose that the system includes a sales booking unit and a price determining unit. However, Abelow does consider pricing information in determining which factors will improve product sales. (Abelow: col. 87, lines 55-56). Murcko teaches a system further comprising:

a sales booking unit for accepting sales reservation of merchandise to be released/sold corresponding to the merchandise information from said many and unspecified customers through the Internet (Figure 12; col. 12, lines 2-27)

a selling price determining unit for determining the selling price of the merchandise based on various market factors, including bidding and auction results (Fig. 12, col. 7, lines 40-60; col. 8, lines 65-col. 9, line 9; col. 28, lines 1-30)

At the time of the Applicant's invention, it would have been obvious to one of ordinary skill in the art to modify the system of Abelow with the teaching of Murcko to accept sales reservations and to allow for fluctuations in pricing depending upon various market conditions. As suggested by Abelow, one would have been motivated to include these features to ensure that the manufacturer of a particular product outperforms competitors. (Abelow: Figure 16; col. 42, lines 33-39)

[claims 17-20] Abelow and Sammon in combination teach an Internet-implemented merchandise planning and development system as previously explained. Furthermore, Abelow discloses a system and method wherein vendors and customers are interconnected, and wherein data (including orders) are transmitted across various types of networks. (col. 9, lines 47-60; col. 41, lines 35-56) However, Abelow and Sammon do not expressly do not disclose the use of a sales-booking unit and the transmission of reservation data from the sales booking unit. Murcko teaches a system further comprising a sales booking unit for accepting sales reservation of merchandise to be released/sold corresponding to the merchandise information and wherein customers and sellers transmit sales reservation data over a network (i.e. the Internet) (Figure 12; col. 12, lines 2-27). At the time of the Applicant's invention, it would have been obvious to one of ordinary skill in the art to modify the method/system of Abelow and Sammon in combination with the teachings of Murcko to include the use of a sales booking unit and the transmission of reservation data from the sales booking unit. As suggested by Murcko, one would have been motivated to include these features to

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provide an efficient pricing system and to encourage free market transactions, which may not otherwise occur (col. 7, lines 41-45)

[claims 21-24] Abelow teaches a system that allows the users to customize various product components. (col. 27, line 65-col. 28, line 67; col. 35, line 64-col. 37, line 19) Abelow further discloses a system that operates via the Internet and includes a display unit as explained in the rejections of claims 1 and 8. Abelow is silent as to whether the (customized component) display unit displays a reservation acceptance screen for allowing the customers to input information on reservations of new merchandise, as the amended claims currently recite. Murcko teaches a system that includes a customized display component, which displays a reservation acceptance screen and allows customers to input information on reservations of new merchandise. (Figures 17-18, col. 27, line 20-col. 28, line 36) At the time of the Applicant's invention, it would have been obvious to one of ordinary skill in the art to further modify the system of Abelow with the teaching Murcko to include a custom display unit that displays reservation acceptance information. As indicated by Murcko, one would have been motivated to include this feature to provide an electronic message that constitutes a statement of intent, which accurately reflects the customer's interests (col. 3, lines 16-39)

[claims 34,35,37, and 39] Abelow teaches the merchandise planning and development method that operates via the internet as explained in the rejection of claim 30 above, but does not expressly disclose that the method includes the use of a

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sales booking unit and a price determining unit. However, Abelow does consider pricing information in determining which factors will improve product sales (col. 87, lines 55-56). Murcko teaches a merchandise planning and development method further comprising,

a sales booking step of accepting sales reservation of merchandise to be released/sold corresponding to the merchandise information from said many and unspecified customers through the Internet; and (Figure 12, col. 12, lines 2-27)

a selling price determining step of determining the selling price of the new merchandise based on various market factors, including bidding and auction results (Fig. 12, col. 7, lines 40-60; col. 8, lines 43-67; col. 28, lines 1-30)

At the time of the Applicant's invention, it would have been obvious to one of ordinary skill in the art to modify the method of Abelow with the teaching of Murcko to accept sales reservations and to allow for fluctuations in pricing depending upon various market conditions. As suggested by Abelow, one would have been motivated to include these features to ensure that the manufacturer of a particular product outperforms competitors. (Abelow: Figure 16; col. 42, lines 33-39)

[claims 43-46] Abelow and Sammon in combination teach an Internet-implemented merchandise planning and development method as previously explained. Furthermore, Abelow discloses a system and method wherein vendors and customers are interconnected, and wherein data (including orders) are transmitted across various types of networks. (col. 9, lines 47-60; col. 41, lines 35-56) However, Abelow and

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Sammon do not expressly do not disclose the use of a sales-booking unit and the transmission of reservation data from the sales booking unit. Murcko teaches a system/method using a sales booking unit for accepting sales reservation of merchandise to be released/sold corresponding to the merchandise information and wherein customers and sellers transmit sales reservation data over a network (i.e. the Internet) (Figure 12; col. 12, lines 2-27). At the time of the Applicant's invention, it would have been obvious to one of ordinary skill in the art to modify the method/system of Abelow and Sammon in combination with the teachings of Murcko to include the use of a sales booking unit and the transmission of reservation data from the sales booking unit. As suggested by Murcko, one would have been motivated to include these features to provide an efficient pricing system and to encourage free market transactions, which may not otherwise occur (col. 7, lines 41-45)

[claims 47-50] Abelow teaches a system that allows the users to customize various product components. (col. 27, line 65-col. 28, line 67; col. 35, line 64-col. 37, line 19) Abelow further discloses a system that operates via the Internet and includes a display unit as explained in the rejection of claims 30. Abelow is silent as to whether the (customized component) display unit displays a reservation acceptance screen for allowing the customers to input information on reservations of new merchandise, as the amended claims currently recite. Murcko teaches a system that includes a customized display component, which displays a reservation acceptance screen and allows customers to input information on reservations of new merchandise. (Figures

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17-18, col. 27, line 20-col. 28, line 36) At the time of the Applicant's invention, it would have been obvious to one of ordinary skill in the art to further modify the system of Abelow with the teaching Murcko to include a custom display unit that displays reservation acceptance information. As indicated by Murcko, one would have been motivated to include this feature to provide an electronic message that constitutes a statement of intent, which accurately reflects the customer's interests (col. 3, lines 16-39)

10. Claims 10,12,14, 36,38, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abelow, Sammon, and Murcko, Jr. and in further view of Palmer ("Fancy Labels, Plain Prices")

[claim 10,12,14] Abelow, Sammon and Murcko teach a merchandise planning and development system including a price-determining unit, which is sensitive to market factors as previously explained. Furthermore, Murcko discloses the use of discount in the pricing system (col. 28, lines 61-65), but Abelow, Sammon, and Murcko in combination do not specifically disclose that selling price determining unit sets discount rate so that the discount rate of the fixed price gradually increases over time (i.e. the fixed price gradually reduces), and determines the selling price according to the discount rate. Palmer discloses selling method/system whereby the discount rate of a fixed price gradually increases the longer the merchandise remains in stock and wherein the fixed price is based upon the discount rate. (page 18, tag inset; page 20, paragraph 20) At the time of the Applicant's invention, it would have been obvious to

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one of ordinary skill in the art to modify the teachings of Abelow, Sammon and Murcko with the teachings of Palmer to have the selling price determining unit increase the discount rate of merchandise the longer it remains in stock and determining the selling price based upon the discount. As suggested by Palmer, one would have been motivated to include this feature to encourage the rapid sale/turn-over of merchandise.

(Palmer: page. 20, par. 20)

[claims 36,38, and 40] Abelow, Sammon and Murcko teach a merchandise planning and development method including a price-determining step, which is sensitive to market factors as explained above. Furthermore, Murcko discloses the use of discount in a pricing system (col. 28, lines 61-65), but Abelow, Sammon, and Murcko in combination do not specifically disclose that the selling price determining step sets discount rate so that the discount rate of the fixed price gradually increases over time (i.e. the fixed price gradually reduces), and determines the selling price according to the discount rate. Palmer discloses selling method/system whereby the discount rate of a fixed price gradually increases the longer the merchandise remains in stock and wherein the fixed price is based upon the discount. (page 18, tag inset; page 20, paragraph 20) At the time of the Applicant's invention, it would have been obvious to one of ordinary skill in the art to modify the method of Abelow, Sammon and Murcko in combination with the teachings of Palmer to have the selling price determining step include increasing the discount rate of merchandise the longer it remains in stock and determining the selling price based upon this discount rate. As suggested by Palmer,

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one would have been motivated to include this feature to encourage the rapid sale/turn-over of merchandise. (Palmer: page. 20, par. 20)

11. Claims 15-16 and 41-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abelow, Sammon, and Murcko, and in further view of Barzalai (USPN 6,012,045)

[claim 15] Abelow and Sammon in combination teach a merchandise planning and development system that operates via the internet as explained in the rejection of claim 1, but Abelow does not expressly disclose that the system includes a price determining unit. However, Abelow does consider pricing information in determining which factors will improve product sales. (Abelow: col. 87, lines 55-56). Murcko teaches a system further comprising a selling price determining unit for determining the selling price of the merchandise based on various market factors (Fig. 12, col. 7, lines 40-60; col. 8, lines 65-col. 9, line 9; col. 28, lines 1-30). At the time of the Applicant's invention, would have been obvious to one of ordinary skill in the art to modify the system of Abelow and Sammon in combination with the teaching of Murcko. As suggested by Murcko, one would have been motivated to include these features to provide an efficient pricing system and to encourage free market transactions, which may not otherwise occur (col. 7, lines 41-45)

Abelow, Sammon and Murcko in combination teach a merchandise planning and development system including a price-determining unit, which is sensitive to market factors as explained above. Furthermore, Murcko discloses that the pricing system

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may be used in combination with other pricing mechanisms such as retail or auctioning systems (col. 8, lines 63-col. 9, line1), but Abelow, Sammon, and Murcko in combination do not specifically disclose the details of bid collecting and further do not disclose that the selling price determining unit evaluates bid distributions. Barzalai discloses system for collecting bids and auctioning merchandise comprising:

a bidding price collecting unit for collecting the bidding prices of new merchandise to be released corresponding to the merchandise information from said many and unspecified customers; and (Figure 5; col. 12, lines 39-45; col. 13, lines 8-25)

a system component for investigating the distribution of bidding prices on the basis of the result of collection of said bidding price collecting unit and determining the selling price of the new merchandise on the basis of the bidding price zone of the greatest number of bids. (col. 13, lines 8-25; col. 16, lines 24-45—e.g. determines when, where, and which price ranges are most popular and allows these factors to influence sales/winning bid decisions)

At the time of the Applicant's invention it would have been obvious to one of ordinary skill in the art to further modify the system of Abelow, Sammon, Murcko in combination with the teaching of Barzalai. As suggested by Abelow, one would have been motivated to include these features to include benchmarking probes to help vendors determine what product features, like pricing, are popular, and will retain and appeal to a customer base. (Abelow, col. 42, lines 33-39)

[claim 16] Abelow, Sammon and Murcko teach a merchandise planning and development system including a price-determining unit, which is sensitive to market

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factors as explained above in the rejection of claim 15. Furthermore, Murcko discloses that the pricing system may be used in combination with other pricing mechanisms such as retail or auctioning systems (col. 8, lines 63-col. 9, line1), but Abelow, Sammon, and Murcko in combination do not specifically disclose the details of the auctioning systems and further do not disclose that the selling price determining unit evaluates auction results. Barzalai discloses system for collecting bids and auctioning merchandise comprising:

an auction unit for auctioning new merchandise to be released corresponding to the merchandise information through said network among said many and unspecified customers; and (Figure 5; col. 12, lines 39-45; col. 13, lines 8-25)

a system component for determining the selling price of the new merchandise on the basis of the auction result by said auction unit. (Figure 5; col. 13, lines 8-25; col. 16, lines 24-45—e.g. determines when, where, and which price ranges are most popular and allows these factors to influence sales/winning bid decisions)

At the time of the Applicant's invention it would have been obvious to one of ordinary skill in the art to further modify the system of Abelow, Sammon, Murcko in combination with the teaching of Barzalai. As suggested by Abelow, one would have been motivated to include these features to include benchmarking probes to help vendors determine what product features, like pricing, will retain and appeal to a customer base. (Abelow, col. 42, lines 33-39)

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[claim 41] Abelow, Sammon and Murcko teach a merchandise planning and development method including a price-determining step, which is sensitive to market factors as explained above in the rejection of claim 15 above. Furthermore, Murcko discloses that the pricing system/method may be used in combination with other pricing mechanisms such as retail or auctioning systems (col. 8, lines 63-col. 9, line1), but Abelow, Sammon, and Murcko in combination do not specifically disclose the details of bid collecting and further do not disclose that the method evaluates bid distributions. Barzalai discloses system for collecting bids and auctioning merchandise comprising:

a bidding price collecting step of collecting the bidding prices of new merchandise to be released corresponding to the merchandise information from said many and unspecified customers; and (Figure 5; col. 12, lines 39-45; col. 13, lines 8-25)

a step of investigating the distribution of bidding prices on the basis of the result of collection of said bidding price collecting step and determining the selling price of the new merchandise on the basis of the bidding price zone of the greatest number of bids. (col. 13, lines 8-25; col. 16, lines 24-45—e.g. determines when, where, and which price ranges are most popular and allows these factors to influence sales/winning bid decisions)

At the time of the Applicant's invention it would have been obvious to one of ordinary skill in the art to further modify the method of Abelow, Sammon, Murcko in combination with the teaching of Barzalai. As suggested by Abelow, one would have been motivated to include these features to include benchmarking probes to help

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vendors determine what product features, like pricing, will retain and appeal to a customer base. (Abelow, col. 42, lines 33-39)

[claim 42] Abelow, Sammon and Murcko teach a implemented merchandise planning and development method including a price-determining step, which is sensitive to market factors in the rejection of claim 15 above. Furthermore, Murcko discloses that the pricing method may be used in combination with other pricing mechanisms such as retail or auctioning systems (col. 8, lines 63-col. 9, line1), but Abelow, Sammon, and Murcko in combination do not specifically disclose the details of the auctioning method and further do not disclose that the method evaluates auction results. Barzalai discloses system for collecting bids and auctioning merchandise comprising:

a step of auctioning new merchandise to be released corresponding to the merchandise information through said network among said many and unspecified customers; and (Figure 5; col. 12, lines 39-45; col. 13, lines 8-25)

determining the selling price of the new merchandise on the basis of the auction result by said auction step. (Figure 5; col. 13, lines 8-25; col. 16, lines 24-45—e.g. determines when, where, and which price ranges are most popular and allows these factors to influence sales/winning bid decisions)

At the time of the Applicant's invention it would have been obvious to one of ordinary skill in the art to further modify the system of Abelow, Sammon, Murcko in combination with the teaching of Barzalai. As suggested by Abelow, one would have been motivated to include these features to include benchmarking probes to help

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vendors determine what product features, like pricing, will retain and appeal to a customer base. (Abelow, col. 42, lines 33-39)

12. Claims 25-28 and 51-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abelow, Sammon, and Murcko, Jr. in further view of Anonymous, "Fresh Cargo Brand Is Renamed".

[claims 25-28] Abelow and Sammon teach an Internet-implemented system and method for allowing consumers to participate in the product design process as explained in the rejection of claim 30. Abelow, Sammon, and Murcko in combination do not expressly disclose that the system/method allow users to vote for the name of a product. However, systems and methods, which allow consumers to select or vote on product names or logos, were well known at the time of the Applicant's invention, as evidenced by the teachings of the "Fresh Cargo Brand Is Renamed" article.

Furthermore, at the time of the Applicant's invention, it would have been obvious to one of ordinary skill in the art to modify the method/system of Abelow, Sammon, and Murcko in combination to allow consumers to provide feedback on the name of a product via the Internet. As suggested by Abelow, one would have been motivated to include this feature to ensure that corporations interact with customers to provide occasional product improvements when needed to meet sales and revenue objectives. (col. 7, lines 1-9)

[claims 51-54] Abelow and Sammon teach an Internet-implemented system and method for allowing consumers to participate in the product design process as

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explained in the rejection of claim 30. Abelow, Sammon, and Murcko in combination do not expressly disclose that the system/method allow users to vote for the name of a product. However, systems and methods which allow consumers to select or vote on product names or logos were well-known at the time of the Applicant's invention, as evidenced by the teachings of the Fresh Cargo Brand Is Renamed" article.

Furthermore, at the time of the Applicant's invention, it would have been obvious to one of ordinary skill in the art to modify the method/system of Abelow, Sammon, and Murcko in combination to allow consumers to provide feedback on the name of a product via the Internet. As suggested by Abelow, one would have been motivated to include this feature to ensure that corporations interact with customers to provide occasional product improvements when needed to meet sales and revenue objectives.
(col. 7, lines 1-9)

Response to Arguments

13. Applicant's arguments filed 10/31/07 have been fully considered but they are not persuasive.

(A) The Applicant argues that the Applicant's invention distinguishes over the prior art because the prior art only allows the user to provide opinions on products while they are being used.

In response to applicant's argument, it is noted that the Applicant has not provided support for the newly added limitation, requires the user to provide comments or feedback prior to use of the new merchandise.

The Examiner notes that the applicant has cited certain passages on page 40 of the response filed 10/31/07 which applicant argues support the amended claim language. However, the Examiner respectfully disagrees, and does not find that the cited passages to provide sufficient support for the exclusionary language now included in the claim. In fact, while applicant has suggested that the information gathered regarding the product is before a product has been produced, the cited figure (FIG. 4) and passages (page 56, lines 15-23, and pg. 41, line 21- pg. 42, line 4) discuss trial product development.

Also, as currently amended, the recited language part of an intended use clause used to describe the type of merchandise planning opinion which was gathered. In other words, in exemplary claim 1, the current claim language recites "the display unit further displaying an inquiry input screen ***for allowing the customers to...***" There is no positive recitation that customers actually perform the steps recited or that the data claimed is ever displayed or that the manner in which the data is gathered ever impacts the method(s) is/are performed.

A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RACHEL L. PORTER whose telephone number is (571)272-6775. The examiner can normally be reached on M-F, 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on (571) 272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


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